

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

SAMUEL LEWIS TAYLOR, Reg. No. 166914,)
)
)
Plaintiff,)
)
)
v.) No. 07-4060-CV-C-SOW
)
)
ROBYN COMBS, et al.,)
)
)
Defendants.)

REPORT, RECOMMENDATION AND ORDER

Plaintiff, an inmate confined in a Missouri penal institution, commenced this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the jurisdictional statute, 28 U.S.C. § 1334.¹

A review of the record indicates the John Doe defendant has not been served with process. Rule 4(m), Federal Rules of Civil Procedure, provides:

If a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Plaintiff was granted leave to proceed in forma pauperis on May 31, 2007. Here, it has been more than 120 days since plaintiff's complaint was filed naming John Doe as a defendant. Plaintiff has neither identified the defendant nor provided an address for service of process. Neither has plaintiff requested an extension of time or shown good cause why the time for service should be extended.

On April 2, 2008, plaintiff requested assistance with locating an address for defendant Nelson. The court will direct defendants to provide to the court, in camera, the last known address for defendant Nelson, if defendants have such an address.

¹This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

IT IS, THEREFORE, ORDERED within twenty days, defendants provide to the court, in camera, the last known address for defendant Nelson. [50] It is further

ORDERED that upon receipt of the address, the Clerk of Court complete the process forms and deliver the summons and complaint to the United States Marshal for service of process. It is further

ORDERED that the United States Marshal attempt service of process in accord with Fed. R. Civ. P. 4(e)(1), if mail service is attempted, or if mail service cannot be effected, by personal service under Fed. R. Civ. P. 4(e)(2). It is further

RECOMMENDED that plaintiff's claims against the John Doe defendant be dismissed, pursuant to Fed. R. Civ. P. 4(m).

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 16th day of October, 2008, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge